

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 22954 of 2004(G)

PETITIONER:

1. SANKARA NARAYANAN,
S/O. LATE SRI.K.T.KUMARAN NAIR,
BRANCH MANAGER, L.C.M.F.LTD., MANGALORE.
2. M.PADMANABHAN NAMBIAR,
S/O. LATE SRI.KUNJIRAMAN NAMBIAR,
BRANCH MANAGER, L.C.M.F.LTD., BEYPORE,
CALICUT-15.
3. P.SWAMINATHAN,
S/O. LATE SRI.MADHAVAN, NAMBIAR,
ACCOUNTANT, L.C.M.F. LTD., BEYPORE, CALICUT-15.
4. T.RAMANUNNI, S/O. LATE APPUKUTTAN NAIR,
PACKER GR.I, L.C.M.F.LTD., COCHIN-3.
5. A.K.RAJAN, S/O.LATE SRI.C.RAGHAVAN NAIR,
BRANCH MANAGER, L.C.M.F.LTD., COCHIN-3.
6. T.INDIRA, D/O. SRI.M.K.DAMODARA KURUP,
SENIOR CLERK, L.C.M.F.LTD., BEYPORE, CALICUT-15.
7. P.V.KAMALA,
D/O. LATE SRI.K.NARAYANA KURUP,
SENIOR CLERK, L.C.M.F.LTD., BEYPORE,
CALICUT-15.
8. P.R.SASEEHARAN, S/O. SRI.P.P.RAGHAVAN,
ATTENDER, L.C.M.F.LTD., BEYPORE, CALICUT-15.
9. C.KASSIM, S/O. SRI.ABDUL KADER,
DRIVER, L.C.M.F.LTD., BEYPORE, CALICUT-15.
10. K.BEENA, D/O. SRI.K.V.KRISHNAN KUTTY,
CLERK, L.C.M.F.LTD., BEYPORE, CALICUT-15.
11. C.SREEKANTH, S/O. SRI.K.T.VASUDEVAN,
CLERK, L.C.M.F.LTD.,
BYPORE, CALICUT-15.
12. C.P.MOHANDAS,
S/O.LATE SRI.NARAYANAN NAIR, PACKER GR.I.,
L.C.M.F.LTD., BEYPORE, CALICUT-15.

13. LAL BAHADOOR, S/O. SRI.DHAN BAHADUR,
WATCHMAN, L.C.M.F.LTD., BEYPORE,
CALICUT-15.

14. UDAY SINGH,
S/O. SRI.KARAN SINGH BOHRA,
WATCHMAN, L.C.M.F.LTD., BEYPORE,
CALICUT-15.

15. A.K.NIMMATHULLA,
S/O. SRI.ABDUL KHADER, JUNIOR CLERK,
L.C.M.F.LTD., BEYPORE, CALICUT-15.

16. K.FATHIMABI, D/O. SRI.B.KOYA,
P.A.TO MANAGING DIRECTOR, L.C.M.F.LTD.,
BEYPORE, CALICUT-15.

17. ABDUL VAHAB,
S/O. LATE SRI.IMBICHI KOYA,
PACKER, L.C.M.F.LTD., BEYPORE, CALICUT-15.

18. T.A.KARUNAN, S/O. SRI.K.V.ACHUTHAN,
POCKER, L.C.M.F.LTD., MANGALORE-1.

19. U.RAMACHANDRAN NAIR,
S/O. LATE SRI.MADHAVAN NAIR, PACKER GR.I.
L.C.M.F.LTD., BEYPORE, CALICUT-15.

BY ADV. SRI.M.M.ABDUL AZIZ (SR.)
SRI.M.A.ABDUL HAKHIM

RESPONDENTS:

1. THE LAKSHADWEEP CO-OPERATIVE MARKETING
FEDERATION LTD. NO.LMA.11, BEYPORE,
CALICUT-15 REP.BY ITS MANAGING DIRECTOR.

2. BOARD OF DIRECTORS,
LAKSHADWEEP CO-OPERATIVE MARKETING FEDERATION LTD.
NO.L.M.A.II, BEYPORE, CALICUT-15,
REP.BY ITS PRESIDENT.

3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
UNION TERRITORY OF LAKSHADWEEP, DEPARTMENT
OF CO-OPERATION AND CIVIL SUPPLIES,
KAVARATTY-682 555.

4. THE ADMINISTRATOR, U.T.OF LAKSHADWEEP,
KAVARATTY-682 555.

BY ADV. SRI.PR.RAMACHANDRA MENON,SC,LAKSHADWEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1- A TRUE COPY OF CLAUSE(1) OF SUCH BYLAWS.
- EXT.P2- A PHOTOSTAT COPY OF THE ORDER DATED 31.3.1988
- EXT.P3- A TRUE COPY OF RESOLUTION NO.12 DATED 10.1.1998 OF THE 2ND RESPONDENT TO PAY THE CENTRAL SCALE OF PAY ON THE BASIS OF VTH PAY COMMISSION TO THE EMPLOYEES OF THE 1ST RESPONDENT.
- EXT.P4- A TRUE COPY OF RESOLUTION NO.5 DATED 7.1.1999 OF THE 2ND RESPONDENT REGARDING THE FIXATION OF PAY +DA+IR of the EMPLOYEES OF THE 1ST RESPONDENT
- EXT.P5- A TRUE COPY OF RESOLUTION NO.7 DATED 7.1.1999 OF THE 2ND RESPONDENT TO FRAME PENSION SCHEME FOR THE EMPLOYEES OF 1ST RESPONDENT
- EXT.P6- A TRUE COPY OF RESOLUTION NO.4 DATED 26.11.1999 OF THE 2ND RESPONDENT INCREASING THE TA AND DA OF THE EMPLOYEES OF THE 1ST RESPONDENT
- EXT.P7- A TRUE COPY OF THE RESOLUTION NO.8 DATED 26.11.99 OF THE 2ND RESPONDENT FOR TAKING STEPS TO AVOID DELAY TO GIVE CENTRAL SCALE OF PAY ON THE BASIS OF VTH PAY COMMISSION REPORT TO THE EMPLOYEES OF THE 1ST RESPONDENT
- EXT.P8- A TRUE COPY OF THE RESOLUTION NO.8 DTED 22.3.00 OF THE 2ND RESPONDENT
- EXT.P9- A PHOTOSTAT COPY OF THE SID RESOLUTION IS MARKED AND PRODUCED HERewith AS THE 2ND RESPONDENT PASSED RESOLUTION NO.5 DTED 26.11.99 TO RAISE THE AGE OF RETIREMENT OF THE EMPLOYEES OF THE 1ST RESPONDENT ON SUPERANNUATION FROM 55 TO 58 YEARS AS IN THE CASE OF THE EMPLOYEES OF THE PRIMARY SOCIETIES OF THE 1ST RESPONDENT
- EXT.P10- A TRUE COPY OF THE ORDER DATED 26.5.00
- EXT.P11- A TRUE COPY OF THE ORDER DATED 30.4.01
- EXT.P12- A TRUE COPY OF RESOLUTION NO.1 DATED 14.2.92
- EXT.P13- A PHOTOSTAT COPY OF THE RELEVANT PROTION OF THE REVISED SCALES OF PAY UNDER VTH PAY COMMISSION REPORT WITH EFFECT FROM 1.1.1996
- EXT.P14- A TRUE COPY OF THE JUDGMENT IN O.P.24710/2001 DATED 17.12.03

- EXT.P15- A PHOTOSTAT COPY OF THE JUDGMENT IN O.P.10288/2002
DATED 17.12.2003
- EXT.P16- A PHOTOSTAT COPY OF TH ORDER DATED 15.6.2004
- EXT.P17- A PHOTOSTAT COPY OF THE RESOLUTION NO.3(B) DTD18.1.01
TO CONTINUE THE 19TH PETITIONER IN SERVICE FOR ONE
YEAR FROM 1.3.01
- EXT.P18- A PHOTOSTAT COPY OF THE MESSAGE DATED 22.1.2001
- EXT.P19- A PHOTOSTAT COPY OF THE APPLICATION DATED 11.10.2004
- EXT.P20- A PHOTOSTAT COPY OF O.M.F.NO.7/4/95-COPY(2)
DATED.21.5.96
- EXT.P21- A PHOTOSTAT COPY OF O.M.F.NO.7/13/92-CO-OP DATED
28.5.1996

RESPONDENT'S EXHIBITS

- EXT.R3(a)- TRUE COPY OF THE AMENDED CLAUSE NO.1 OF THE BYLAWS
OF THE 1ST RESPONDENT FEDERATION
- EXT.R3(b)- TRUE COPY OF THE PROFIT AND LOSS ACCOUNT OF THE 1S
RESPONDENT FEDERATION FOR THE YEAR 98-99
- EXT.R3(c)- TRUE COPY OF THE ORDER F.NO.7/18/2001/CO-OP (3) DATED
15.10.2001
- EXT.R3(d)- TRUE COPY OF THE LETTER DATED 3.6.04 SENT BY THE 1ST
PETITIONER
- EXT.R3(e)- TRUE COPY OF THE SEC.4 (a) OF THE SPECIAL BYLAWS OF THE
1ST RESPONDENT FEDERATION

(TRUE COPY)

P.A TO JUDGE

J.M.JAMES, J.

W.P.(C). 22954/2004 (G)

Dated this the 25th day of January, 2007

JUDGMENT

The writ petitioners are the employees of the first respondent, Federation. Their grievance is that the benefit of the Vth pay commission, granting the Central parity of pay and allowances, are not being extended to them and also the retirement age, that is fixed as 58, in respect of members of the Primary Co-operative Societies, is not implemented in respect of the writ petitioners under the first respondent, Federation.

2. Though notices are being served to respondents 1 and 2, there is no representation. Sri. P.R.Ramachandra Menon appears for respondents 3 and 4. Counter had been filed. Reply affidavit had also been filed by the petitioners.

3. I heard the arguments advanced by both sides. The bye-laws of the first respondent, Federation, prior to 30.4.2001, did not make it obligatory for the federation to seek the approval of the Registrar. However, after the

amendment of Clause-I of the bye-laws of the first respondent as registered by the Registrar on 30.4.2001, the sanction of the Registrar is necessary, when the Board of Directors prescribed the strength of the establishment of the Society. The scale of pay is admissible to each member thereof and appointment of all the members of the establishment, except the Secretary or any other staff appointed or lent by the Government. The learned Senior counsel for the writ petitioners submits that the Registrar had got no authority to amend the bye-laws, unless the same is resolved by the General Body of the first respondent, Federation.

4. There is no material produced before me to show that the first respondent had not passed the resolution, recommending the amendment of Clause-I of the bye-laws. The respondents 3 and 4 are also not able to say the same. However, Ext.P2 dated 31.3.1988, an order passed by the Registrar of Co-operative Societies, reveal that the approval of the implementation of the IIIrd and IVth pay commission, in respect of the employees of the first respondent, was done

with the approval of the Registrar.

5. The prayer of the writ petitioners is that non granting of the benefits of the Vth pay commission to the employees of the first respondent is arbitrary and as the Board of Directors of the first respondent had already recommended the same, the approval of the Registrar is not necessary.

6. I am unable to accept this argument. Approval of the Registrar had already been obtained, in respect of the implementation of pay scales of IIIrd and IVth pay commissions. Therefore, the same procedure has to be followed, in respect of the implementation of the Vth pay commission as well.

7. Ext.P11 is an O.M. Dated 30.4.2001 of the Registrar of the Co-operative Societies, issued on behalf of the administrator, which reveal that the first respondent, while auditing, was found running into an accumulated loss of Rs.98.12 lakhs as on 31.3.1999. The net loss for the year 1998-99 is Rs.18.69 lakhs. The average loss is calculated to be Rs.1.56 lakhs per month.

8. One of the employees of the first respondent came up before this Court through O.P.No.10288/2002. As per the judgment dated 17.12.2003, the learned single Judge of this Court had quashed Ext.P7, denying the benefits of the Vth pay commission to that employee, on the ground that the said Ext.P7 order was passed without hearing him. Therefore, the matter was sent back to the Registrar of the Co-operative Societies for re-consideration. The enhancement of the retirement age was also directed to be re-considered.

9. Ext.P14 is O.P.24710/2001, having preferred by 14 persons, who are also parties to the present writ petition. The learned single Judge of this Court had disposed of the same on 17.12.2003, directing to adopt the judgment in O.P.10288/2002.

10. Ext.P16 is the order of the Registrar of Co-operative Societies dated 15.6.2004. In it he had stated that though the first respondent, Federation, was running into loss, considering the phenomenal increase in the cost of living as well as numerous representations made by the

employees, recommended by the first respondent, the Registrar of Co-operative Societies had revised the pay scale of the employees of the first respondent, Federation. The relevant portion is reproduced below:-

“The pay scale with effect from 1.9.2001 vide order F.No.7/18/2001-Co-op. (3) dated 15th October 2001 and HRA with effect from 1st January, 2004 vide order even No. dated 10th February, 2004 and DA with effect from 1st January, 2004, SCA/CCA with effect from 1st June, 2004 vide order even No. dated 2nd June, 2004. Thus the salary and allowances of the petitioners have already been revised more or less equal or similar to that of the Central Government employee. Therefore, the request of the petitioner for the revision of the pay scale at the rate of Central Government employees does not merit

consideration as it has already been revised.”

11. Thus it is seen, despite the fact of loss being suffered by the first respondent, the pay scale of the employees of the first respondent had already been revised. Hence, I find no further orders are necessary in this regard.

12. The learned counsel appearing for the respondents 3 and 4 had submitted that the age of the members of the Primary Societies had already been enhanced to that of 58 in Ext.P16 itself. The Registrar of the Co-operative Societies held thus:-

“Therefore, there is sufficient flexibility within the ambit of existing provisions of bye-laws for extension of the retirement age which has to be exercised with discretion in deserving cases only, failing which undesirable persons will also get extension automatically if general extension is given. The post in which the applicants are working are common cadre posts which needs no

special knowledge of scientific or technical nature nor the applicants have any such special qualification. However, within the ambit of the existing of bye-laws the retirement age can be extended with the recommendation of the Director Board in deserving cases.”

13. In the circumstances, the Registrar is directed to examine whether the retirement age was enhanced to 58 in respect of the employees of the Primary Co-operative Societies, and also the same could be extended to the employees of the first respondent as well, as otherwise the same would amount to discrimination. The petitioners be heard before a decision is taken on this matter. If the retirement age of the members of the Primary Co-operative Societies are found to be fixed as 58, the Registrar shall fix the same age, in respect of the employees of the first respondent, as well.

14. The learned Senior counsel contended that the first respondent is now paying 7.5 percent of the basic pay

of the petitioners, as their HRA and CCA for B2 cities. It is prayed that the same may be enhanced to 15% of the basic pay. The Registrar shall consider this contention as well, at the time of hearing of the petitioners along with the enhancement of the age, as directed above.

The writ petition is closed as above.

J.M.JAMES
JUDGE

mrCS